

(ii) The contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(iii) The concurrence of a cognizant official named in NASA Management Instruction 2210.2 or the Director, Technology Utilization Division, NASA Headquarters, has been obtained.

(3) The contractor's request for permission in accordance with paragraph (e)(1) of this section may be made either before contract award or during contract performance. Any permission granted in accordance with paragraph (e)(2)(i) or (ii) of this section, shall be by express contract provision (or amendment) overriding paragraph (d)(3) of this section, rather than by deleting paragraph (d)(3) from the clause. Any permission granted in accordance with paragraph (d)(2)(iii) of this section may be either by deleting paragraph (d)(3) or by special contract provision, as appropriate. Any contract provision relating to any permission granted in accordance with paragraph (2)(i) or (2)(ii) of this section may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor. Also, when any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in paragraph (c)(1) of the clause (see also FAR 27.404(f)(1)) and without any obligation of confidentiality on the part of the Government, unless in accordance with paragraph (e)(2)(ii) of this section the contributions of the Contractor may be considered "substantial" for the purposes of FAR 27.408

(i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(4) If the contractor has not been granted permission to copyright in accordance with paragraphs (e)(1) and (e)(2) of this section, paragraph (d)(3)(ii) of the clause at FAR 52.227-14, Rights in Data—General (as modified by 1852.227-14), enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The Contracting Officer may, in consultation with the installation patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of agency mission objectives, needed to support specific agency programs, or necessary to meet statutory requirements.

(5) In order to insure consistency with copyright law, paragraph (d)(3)(iii) clarifies that the word "establish" in FAR 52.227-14, Rights in Data—General shall be construed as "assert" when used with reference to a claim to copyright.

(f) *Unauthorized marking of data.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227-14, Rights in Data—General.

(g) *Omitted or incorrect notices.* The contracting officer shall consult with the installation's Patent or Intellectual Property Counsel before agreeing to add or correct any markings on data under paragraph (f) of the clause at FAR 52.227-14, Rights in Data—General.

[54 FR 28272, July 5, 1989, as amended at 56 FR 12458, Mar. 26, 1991; 60 FR 40515, Aug. 9, 1995; 60 FR 47312, Sept. 12, 1995]

#### **1827.405 Other data rights provisions.**

(a) *Acquisition of existing computer software.* (1) When the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, is used, NASA paragraph (e) (see 1827.409(f))

may be added to receive updates, correction notices, consultation information, and other similar information on any computer software delivered under the purchase order or contract by authorizing the contracting officer or the contract technical representative/user to sign any vendor-supplied agreements, registration forms, or cards and return them directly to the vendor. This procedure is to facilitate receiving applicable information and is not intended to alter any NASA rights or obligations set forth in the clause or elsewhere in the contract. The price, schedule, and other terms, if any, are to be specified in the purchase order or contract.

(2) When the clause at 52.227-19, Commercial Computer Software—Restricted Rights, is used, NASA paragraph (f) (see 1827.409(g)) may be added to incorporate applicable portions of the contractor's standard commercial license or lease agreement into the purchase order/contract to the extent consistent with the clause, Federal laws, standard industry practices, and the FAR.

(3) Instead of the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights (either with or without additional paragraphs (e) and/or (f)), the contracting officer may use the clause at 1852.227-86, Commercial Computer Software—Licensing. This clause is particularly useful when there are multiple computers on which the computer software may be used, but simultaneous use is prohibited or restricted in the vendor/contractor standard commercial software license to be incorporated in and made part of the purchase order/contract. It also automatically adopts terms in the vendor/contractor standard commercial license that may be less restrictive than those set forth in the clause at FAR 52.227-19 without having to customize that clause or modify the purchase order/contract. In addition, it enables the vendor/contractor's standard marking to be used without requiring additional markings on the software.

(b) *Contracts awarded under the Small Business Innovative Research (SBIR) Program.* If, during the performance of an SBIR contract (Phase I or Phase II), the need arises for NASA to obtain de-

livery of restricted computer software as defined in the clause at FAR 52.227-20, Rights in Data—SBIR Program, and the contractor agrees to such delivery, the restricted computer software may be acquired with restricted rights by modification of the contract or under an agreement incorporated in and made part of the contract, using the restricted rights set forth in FAR 27.404(e) and the related restrictions as a guide.

(c) *Production of special works.* Paragraph (f) of the clause at 48 CFR 1852.227-17 is to be added to the clause at FAR 52.227-17, Rights in Data—Special Works, whenever that clause is used in any NASA contract.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995; 60 FR 47312, Sept. 12, 1995; 61 FR 5314, Feb. 12, 1996]

#### **1827.406 Acquisition of data.**

(a) *General.* When specifying data delivery requirements in accordance with FAR 27.406(a), requirements for delivering technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate.

(b) *Reports of work.* (1) In addition to any other data delivery requirements set forth in the contract in accordance with FAR 27.406, contractors normally should be required to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement) and also may be required to furnish them in cost-reimbursement supply contracts if they are considered desirable for monitoring contract performance. This purpose shall be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(i) *Monthly progress reports.* The contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They